



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair

Representative Joy A. San Buenaventura, Vice Chair

Friday, March 27, 2015, 3:00 p.m.
State Capitol, Conference Room 325

By

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Bill No. and Title: Senate Bill No. 223, S.D. 1, Relating to the Office of the Public Guardian.

Purpose: Prohibits the Office of the Public Guardian (OPG) from petitioning for its appointment as guardian of the person of an incapacitated person. Provides that OPG's guardianship orders may include the authority to manage a ward's financial assets where no conservator has been appointed to protect the ward's estate. Effective 01/07/2059.

Judiciary's Position:

OPG supports this legislation. Chapter 551A, Hawaii Revised Statutes (HRS), establishes OPG within the Judiciary to serve as court-appointed guardian of the person for incapacitated persons for whom no willing and suitable individual is available to serve in this capacity. Currently, the law authorizes OPG to petition for its own appointment as guardian.

For at least the past ten years, OPG has declined to petition the court for its own appointment based on recommendations provided by a national study on public guardianship. The 2005 study, entitled "Wards of the State: A National Study of Public Guardianship," concluded, among other things, that "petitioning is a problematic role for many public guardianship programs," due to the potential for conflicts of interest. For instance, a program might be inclined to petition more frequently, regardless of the need for guardianship, if its budget is dependent on the number of individuals served, or a program may "cherry pick" its



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cases, petitioning for guardianship of only those individuals who are relatively “easy,” or less costly and time-consuming to serve.

The national study recommended against public guardianship programs petitioning for their own appointment, and that recommendation has been adopted into law in Vermont and Washington. This measure proposes a similar prohibition with respect to Hawaii’s public guardianship program. Third parties, such as medical facilities, the Department of Human Services (Adult Protective Services), and the Department of Health (Adult Mental Health Division, Hawaii State Hospital and Developmental Disabilities Division), would continue to have the authority to petition for OPG’s appointment as guardian under section 560:5-304, HRS.

The bill also provides that OPG's guardianship orders may include the authority to manage and oversee the financial assets of a ward, where no conservatorship is in place. While some of OPG’s wards have assets that require protection under a conservatorship, there may be no conservator in place for various reasons, including the cost of conservatorship proceedings or the lack of a suitable person or entity willing to serve. In such cases, when OPG has attempted to access a ward’s financial resources to pay for the ward’s care, some financial institutions have denied it access because the public guardian lacks conservatorship orders. This measure would clarify that the court has the authority to expand the powers of the public guardian to access and manage its wards’ financial assets in the absence of a conservator.

Finally, this measure conforms the OPG law to the general guardianship laws that authorize the appointment of an emergency guardian and a temporary substitute guardian.

Thank you for the opportunity to testify in support of S.B. No. 223, S.D. 1.